

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
CHARLES C. COLE, SR.
FORMER MAGISTRATE OF BERKELEY COUNTY**

COMPLAINT NO. 101-2020

**PUBLIC ADMONISHMENT OF CHARLES C. COLE, SR.,
FORMER MAGISTRATE OF BERKELEY COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Joe Armstrong, Administrative Director of the Supreme Court of Appeals of West Virginia setting forth certain allegations against Charles C. Cole, Sr., former Magistrate of Berkeley County (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s sworn statement, the information and documents obtained from the investigation, the April 26, 2021 agreement between Judicial Disciplinary Counsel and Respondent (*see* attached), his resignation letter, and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause that Respondent violated Rules 1.1, 1.2, 2.3(A) and (B), and 2.8(B) of the Code of Judicial Conduct at a special meeting and ordered that he be publicly admonished pursuant to RJDP 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent served as a Magistrate in Berkeley County from January 1, 2013, to April 28, 2021. At all times relevant to the instant complaint, Respondent was serving in his capacity as a Magistrate. Prior to taking office, Respondent was required to read the Employee Handbook for the Supreme Court of Appeals of West Virginia. The Handbook contains a lengthy multi-page

section pertaining to “Fair and Equal Treatment Principles (No-Discrimination, No Harassment).”¹ On December 2, 2012, Respondent signed a written document in which he certified that he had “received and read” the Handbook.

On or about October 28, 2020, the Honorable Richard Stephens, Chief Magistrate of Berkeley County, contacted the Administrative Office and advised that Respondent had been accused of improperly touching a magistrate court employee. The Administrative Director conducted an initial investigation. At its conclusion, Administrative Director Armstrong filed the above-captioned judicial ethics complaint on November 12, 2020.

The JIC then conducted an independent investigation. Consistent with the Administrative Office probe, the Commission found that on or about October 15, 2020, Respondent came up behind the employee while at work and placed his hands on her hips. The employee was uncomfortable by the unwelcome touch but said nothing to Respondent because of his position. Instead, Respondent alerted her immediate supervisor who, in turn, contacted Chief Magistrate Stephens. An aggravating factor is that during the same employee’s birthday in approximately 2017, Respondent grabbed her, turned her over on his lap and spanked her. The employee was embarrassed by the incident but said nothing because of Respondent’s status.

On or about March 31, 2021, Judicial Disciplinary Counsel took a sworn statement from Respondent. Respondent testified that he had no memory of the October 15, 2021 incident. Respondent did not say the incident didn’t happen just that he had no memory of it. Respondent acknowledged that he had always found the employee truthful and had no reason to believe that she made up the incident. Respondent also admitted spanking the employee during a birthday

¹ The Handbook has been revised several times between 2014 and 2021. The conduct engaged in by Respondent, which is set forth below would violate the 2014 through the 2021 versions of this section. The various versions have been placed on a site easily accessible by all Court employees.

celebration at the Courthouse. According to Respondent, he swatted the employee on the rear end approximately nine times. Respondent said he stopped when the employee asked him too. He also said everyone in the room laughed in a good-natured way.

Respondent considers himself a jokester. Respondent said he often liked to sneak up behind the same employee and make a loud noise or touch her back in an effort to startle her. Respondent said the employee would jump and they would both laugh. Respondent acknowledged engaging in such activity with other employees. Under repeated questioning, Respondent refused to admit that his actions were improper. Instead, he claimed that he was just being spontaneous, that his actions were intended to be humorous and that he was trying to have some fun. He had no idea that the employee was bothered by the incident. Respondent declined to acknowledge that any unwelcome touch is an unwarranted touch or that an uneven balance of power would cause an employee to refrain from complaining about an unwanted touch. While Respondent agreed that he would no longer spank an employee, he saw no need to stop touching people in an effort to scare them:

- Q. What about scaring somebody by touching them on the back and getting them to jump?
- A. Would I do that again? I'm not going to do it to [the employee], but I have done that for a very long time. It's not something new. . . . And it's spontaneous, for fun.
- Q. But what if she is not having fun?
- A. Then she is, in my opinion, a strong enough lady that she would look at me and say, "Charlie, I want you to stop doing that."

(3/31/2021 Tr. at 38).

As a result of the investigation, Judicial Disciplinary Counsel entered into the attached agreement signed by Respondent. Pursuant thereto, Respondent agreed to immediately resign from his magistrate's position, to never again seek judicial office in West Virginia by election or appointment, and to accept an admonishment from the JIC for violations of the Code of Judicial Conduct for his behavior toward the employee in question.

CONCLUSIONS

The Commission unanimously² found that probable cause exists in the matters set forth above to find that Charles C. Cole, Sr., former Magistrate of Berkeley County, violated Rules 1.1, 1.2, 1.3, 2.3(A) and (B), and 2.8(B) of the Code of Judicial Conduct as set forth below:

1.1 – Compliance With the Law

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

1.2 – Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

2.3. – Bias, Prejudice, and Harassment

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation

² The vote was 8-0. The Honorable Bridget Cohee, Judge of the 23rd Judicial Circuit, disqualified herself from the case.

2.8 – Decorum, Demeanor etc.

- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and others with whom the judge deals in an official capacity

The Commission further found that formal discipline was not essential as Respondent had agreed to immediately resign as magistrate and to never again seek judicial office by election or appointment. However, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [3] to Rule 2.3 defines “[h]arassment . . . is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation.


A common phrase used by almost everyone is “don’t invade my personal space!” What does it mean and should society be cognizant of the phrase when dealing with other people? The Merriam Webster Dictionary defines “personal space” as “the distance from another person at which one feels comfortable when talking to or being next to that other person.” It’s the physical distance between two people in a social, family or work environment. As the author Robert Sommer said, “Personal space refers to an area with invisible boundaries surrounding a person’s body into which intruders may not come.”

The study of personal space is called proxemics. There are four distinct personal space zones: intimate (0-2 feet); personal (2-4 ft.); social (4-12 ft.) and public (more than 12 ft). Deference for a person’s space is a sign of respect for the person. No one should ever invade someone’s personal space in a work setting without permission. Consequently, no one should intentionally touch someone in a work setting without permission or even in jest. As noted Anthropologist Jane Goodall once said, “You have to realize that touching is a real violation of personal space.”

Unwanted touching is harassment. Therefore, a judge should never intentionally touch someone without first asking permission. Respondent’s touches to the employee in question were

unwelcome and clearly constituted harassment in violation of Rules 1.1, 1.2, 2.3(A) and (B) and 2.8(B) of the Code of Judicial Conduct. There is no place in the judiciary for a judge who has no respect for boundaries. By his actions, Respondent cast shame on the whole judiciary and no longer deserves the title of judge. Therefore, it is the decision of the Judicial Investigation Commission that Charles C. Cole, Sr., former Magistrate of Berkeley County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Cole for his conduct as fully set forth in the matters asserted herein.

Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.



The Honorable Alan D. Moats Chairperson
Judicial Investigation Commission



Date

ADM/tat

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
THE HONORABLE CHARLES C. COLE, SR.
MAGISTRATE OF BERKELEY COUNTY**

JIC COMPLAINT NO. 101-2020

AGREEMENT

Magistrate Charles C. Cole, Sr., Magistrate of Berkeley County (“Respondent” or “Magistrate Cole,”) and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel, hereby enter into this Agreement consisting of the following terms:

1. On November 12, 2020, a judicial ethics complaint was filed against Respondent.
2. The Judicial Investigation Commission (JIC) Counsel immediately began an investigation of the complaint. After a thorough investigation, JIC Counsel spoke with Respondent in an effort to resolve the complaint without filing a formal statement of charges.
3. Respondent and Judicial Disciplinary Counsel agree to the following terms and conditions:
 - a. Magistrate Cole agrees to immediately resign his position as Magistrate for Berkeley County, West Virginia, effective on or before close of business, Wednesday, April 28, 2021;
 - b. Magistrate Cole agrees to never again seek judicial office by election or appointment in West Virginia. Judicial office is defined by Application I(A) of the West Virginia Code of Judicial Conduct to include Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters;
 - c. Judicial Disciplinary Counsel agrees to recommend to the Judicial Investigation Commission that the Commission issue an admonishment in the above-captioned

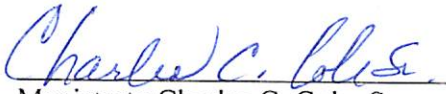
matter which will reflect Respondent violated Rules 1.1, 1.2, 2.3(A) and (B) and 2.8(B) of the Code of Judicial Conduct;

- d. Both parties understand, acknowledge and agree that the decision to accept or reject this agreement is solely within the purview of the Judicial Investigation Commission. The parties understand, acknowledge and agree that the Judicial Investigation Commission has the authority to reject this agreement and if it chooses to do so that Magistrate Cole and Judicial Disciplinary Counsel will be returned to their original positions;
- e. Magistrate Cole further understands, acknowledges and agrees that any admonishment issued by the Judicial Investigation Commission is public pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure;
- f. Magistrate Cole also understands, acknowledges and agrees that if he files an objection to any admonishment issued by the Judicial Investigation Commission then the Commission shall be required to consider and/or file a Formal Statement of Charges pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure;
- g. Magistrate Cole also understands, acknowledges and agrees that if he violates any of the terms of this agreement, the parties will be returned to their original positions and the Judicial Investigation Commission may reopen Complaint No. 101-2020 for further investigation and prosecution of any violations of the Code of Judicial Conduct associated therewith. Magistrate Cole also agrees that by signing this document he has waived any future statute of limitations argument with respect to Complaint No. 101-2020 should he violate the terms of the agreement necessitating the prosecution of any violations of the Code of Judicial Conduct;


4. Respondent understands, acknowledges and agrees that he is entering into this agreement because it is in his best interest and that no other inducements have been promised other than what is contained within the four corners of this document.

5. All parties agree to do everything necessary to ensure that the foregoing terms of this Agreement take effect.

AGREED:


Magistrate Charles C. Cole, Sr.
Magistrate of Berkeley County

04/26/2021
Date


Teresa A. Tarr, Esquire
Judicial Disciplinary Counsel

4/23/2021
Date


Brian J. Lanham, Esquire
Judicial Disciplinary Counsel

4-23-21
Date